Vol. 24
Contents

2004

OXFORD JOURNAL OF LEGAL STUDIES

VOLUME 24

Published on behalf of The Faculty of Law,
University of Oxford

OXFORD UNIVERSITY PRESS
2004

General Editor: J. Eekelaar

Editorial Committee: J. W. Davies, G. de Burca,
S. Fredman, J. Gardner, S. Gardner, J. Hackney,
J. Dickson, C. McCrudden, D. Prentice

CONTENTS

ARTICLES

ALLAN, T. R. S., Legislative Supremacy and Legislative Intent: A Reply to Professor Craig 563

BAGHERI, MAHMOOD and NAKAJIMA, CHIZU, Competition and Integration among Stock Exchanges: The Dilemma of Conflicting Regulatory Objectives and Strategies 69

CAHIR, JOHN, The Withering Away of Property: The Rise of the Internet Information Commons 619

CRAIG, PAUL, The Common Law, Shared Power and Judicial Review 237

CRAIG, P. P., Legislative Intent and Legislative Supremacy: A Reply to Professor Allan 585

DWORKIN, RONALD, Hart's Postscript and the Character of Political Philosophy 1

DYZENHAUS, DAVID, The Genealogy of Legal Positivism 39

HUSAK, DOUGLAS, The Criminal Law as Last Resort 207

JANSEN, NILS, Duties and Rights in Negligence: A Comparative and Historical Perspective on the European Law of Extracontractual Liability 443

KAVANAGH, AILEEN, The Elusive Divide between Interpretation and Legislation under the Human Rights Act 1998 259

LARDY, HEATHER, Is there a Right not to Vote? 303

LUTHER, P., Fixtures and Chattels: A Question of More or Less... 597

MCBRIDE, NICHOLAS J., Duties of Care—Do they Really Exist 417

MCCRUDDEN, CHRISTOPHER, FORD, ROBERT and HEATH, ANTHONY, Legal Regulation of Affirmative Action in Northern Ireland: An Empirical Assessment 363

MCLEAN, JANET, The Crown in Contract and Administrative Law 129

MULLALLY, SIOBHAN, Feminism and Multicultural Dilemmas in India: Revisiting the *Shah Bano* Case 671

MURPHY, JOHN, The Merits of *Rylands* v *Fletcher* 643

ORREGO, CRISTÓBAL, H. L. A. Hart's Understanding of Classical Natural Law Theory 287

ROBINSON, PAUL H. and DARLEY, JOHN M., Does Criminal Law Deter? A Behavioural Science Investigation 173

TAYLOR, GREG, Concepts of Intention in German Criminal Law 99

WATTERSON, STEPHEN, An Account of Profits or Damages? The History of Orthodoxy 471

REVIEW ARTICLES

BAMFORTH, NICHOLAS, Conceptions of Anti-Discrimination Law 693

CVIJIC, SRDJAN and ZUCCA, LORENZO, Does the European Constitution need Christian Values? 739

ENCHELMAIER, STEFAN, Four Freedoms, How Many Principles? 155

FISHER, ELIZABETH, The European Union in the Age of Accountability 495

HIMMA, KENNETH EINAR, Do Philosophy and Sociology Mix? A Non-Essentialist Socio-Legal Positivist Analysis of the Concept of Law 717

SAMUEL, GEOFFREY, English Private Law: Old and New Thinking in the Taxonomy Debate 335

SHEINMAN, HANOCH, Are Normal Contracts Normal Promises? 517

SYRPIS, PHIL, In Defence of Subsidiarity 323

WILLIAMS, S. G., Indeterminacy and the Rule of Law 539

TABLE OF CASES

[Entries refer to cases receiving substantial discussion or criticism in this volume]

Brown v Stott [2001] HRLR 9 264, 271
Burnie Port Authority v General Jones Pty Ltd (1994) 179 CLR 520 661–5

Danial Latifi & Anr v Union of India 2001 AIR SC 3958 672–3, 674, 682–5, 686, 687, 689, 691, 692
De Vitre v Betts (1865) 34 LJ Ch 289 479–80, 481, 483
D'Eyncourt v Gregory (1866) LR 3 Eq 382 609, 616–17
Doner Shop Case NStZ-RR 2000, 165 99–100, 102, 108–9, 112, 114–15

Fairchild v Glenhaven Funeral Services Ltd [2002] 1 AC 32 431
Fisher v Dixon (1845) 12 Cl & F 312; (1845) 8 ER 1426 605

Hellawell v Eastwood (1851) 6 Ex 295; (1851) 155 ER 554 611–12, 613
Hills v Evans (1862) 4 DeG&J 288 478–9, 481, 483
Hobson v Gorringe [1897] 1 Ch 182 617–18
Holland v Fox (1984) 3 E & B 977 477–8, 489
Holland v Hodgson (1872) LR 7 CP 328 597–8, 611–15
Hunter v Canary Wharf Ltd [1997] AC 665 644, 647, 650, 652–3, 658, 661

International Transport Roth GmbH v Secretary of State for Home Department [2002] HRLR 31 259, 260, 281

Lancaster v Eve (1859) 5 CB(NS) 717; (1859) 141 ER 288 616
Lawton v Lawton (1743) 3 Atk 13; (1743) 26 ER 811 602, 603
Leather Strap Case BGHSt 7, 363 112–13

Mawman v Tegg (1826) 2 Russ 385 484
McGhee v National Coal Board [1973] 1 WLR 1 430–31
Mohammed Ahmed Khan v Shah Bano Begum 1985 AIR SC 945 671–92

Needham v Oxley (1863) 8 LT 604; (1863) 2 NR 388; (1863) 11 WR 852 482
Neilson v Betts (1871) LR 5 HL 1 471–94

R v A [2002] 1 AC 45 260, 268–9, 274, 276, 277, 278
R v Lambert [2002] 2 AC 545 275, 277, 278–9, 282, 284
R v Secretary of State, ex parte Anderson [2002] UKHL 46 277
R v Secretary of State for Education and Employment, ex p Begbie [2000] 1 WLR 1115 576
R v Shayler [2003] 1 AC 247 280
Reeves v Commissioner of Police of the Metropolis [2000] 1 AC 360 430
Rylands v Fletcher (1866) LR 1 Exch 265 643–69

Transco plc v Stockport Metropolitan Borough Council [2003] UKHL 61 646, 654, 655, 656, 667

Vidi v Smith (1854) 3 E & B 969 476–7

Wood v Hewett (1846) 8 QB 913; (1846) 115 ER 1118 615–16

[Entries refer to cases receiving substantial discussion or criticism in this volume]

Canadian Charter of Rights and Freedoms 1982
s 33 64–5
Code Civil (France)
art 1382 439–40, 462, 464
art 1384 463
Code of Criminal Procedure 1861 (India)
s 125 679–80

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
Art 2 263, 265
Art 2(1) 263
Art 6 248, 265, 278
Art 6(1) 263
Art 6(2) 275

Fair Employment (Northern Ireland) Act 1989 365
s 11 367
s 13 366
s 31 366, 367, 371
Fair Employment and Treatment Order 1998, SI 1998/3162 365–6
Art 11 367
Art 13 366, 367, 368, 371, 372–3, 411–12
Art 55 366, 367, 371

Human Rights Act 1998
s 3 251–2, 260–61, 263, 266, 276, 277–8, 279, 281, 283–4, 285
s 3(1) 259, 265, 274–5, 277, 284
s 4 276
Schedule *see* European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

lex Aquilia [C3rd BC] 448, 449–50, 451, 452–3
Lord Cairns' Act 1858 482–3, 491

Muslim Women (Protection of Rights in Divorce) Act 1986 (India) 672, 681–3, 684, 685, 686, 687, 691

Northern Ireland Act 1998 365